

## 1480.504

(5) Insert the clause at 1452.280-3, SUBCONTRACTING LIMITATIONS, in accordance with 1480.601(b).

(6) Insert the clause at 1452.280-4, INDIAN ECONOMIC ENTERPRISE REPRESENTATION, in accordance with 1480.801(a).

### **1480.504 Other than full and open competition.**

#### **1480.504-1 Set-asides for Indian economic enterprises.**

(a) Each proposed procurement for supplies or services that has an anticipated dollar value in excess of the simplified acquisition threshold amount in FAR Part 13.003 must be set aside exclusively for IEEs, and referred to as an “Indian Economic Enterprise Set-aside,” when there is a reasonable expectation that offers will be received from two or more responsible IEEs, and award will be made at a reasonable price except when:

(1) The acquisition is for construction that is not covered construction, as described in 1480.401(b);

(2) A deviation has been obtained in accordance with 1480.403; or

(3) Use of other than full and open competition has been justified and approved in accordance with 1480.504-2.

(b) When acquiring services to be performed in whole or in part on Indian land under a tribe’s jurisdiction, the CO must give written notice to the governing body or bodies of the applicable Indian tribe simultaneously with publication of the synopsis required by paragraph (c)(1) of this section. The notice must state IA’s intent to solicit services or supplies using an IEE set-aside and provide the tribe with the opportunity to contract for the program within 15 calendar days from the date of the synopsis publication in the GPE.

(1) If the tribe does not oppose the set-aside intention or advise IA by the established deadline of its intent to contract, IA will proceed with the solicitation in accordance with FAR 5.2.

(2) If the tribe advises IA by the established deadline of its intent to contract, it must adequately justify a deviation for work on or near Indian land under its jurisdiction through a tribal resolution in accordance with Public Law 93-638.

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(c) When using an IEE set-aside in accordance with this section, the CO must do the following:

(1) Synopsise the acquisition in the Governmentwide point of entry (GPE) as required by FAR Subpart 5.2, and identify it as an IEE set-aside.

(2) Use the Class Justification for Use of Other Than Full and Open Competition (JOFOC) in Acquisition of Supplies and Services from Indian Industry to meet the requirements of FAR 6.303.

(3) By separate memorandum to the file, document that the supplies or services to be acquired are available from two or more responsible and IEEs; the anticipated cost to IA of the required supplies or services is determined to be reasonable; and the information in the JOFOC in Acquisition of Supplies and Services from Indian Industry is accurate and complete as it pertains to the proposed acquisition.

(4) Reject offers that fail to provide representation that they meet the definition of an IEE. The CO may also request the Office of the Inspector General (on Form DI-1902 as part of a normal pre-award audit) to:

(i) Assist in determining the eligibility of the low responsive and responsible offerors on Buy Indian Act awards; and

(ii) Determine whether the work will be performed by the labor force required under 1480.601.

(5) When using sealed bidding, determine that the price offered by the prospective contractor is considered to be reasonable and at a fair market price as required by FAR 14.408-2 before awarding a contract.

(6) When using competitive proposals, solicit proposals in accordance with FAR Subpart 15.2 and select sources in accordance with FAR Subpart 15.3 and DIAR Subpart 1415.6.

(7) When using competitive proposals or when negotiating modifications that impact the cost of a contract, conduct proposal analyses, including cost or price analyses in accordance with FAR Subpart 15.4, negotiate profit or fee in accordance with the procedures in FAR Subpart 15.4 and DIAR Subpart 1415.9, and prepare a negotiation memorandum in accordance with FAR 15.406-3 and DIAR 1415.808.

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(8) When acquiring architect-engineer services, solicit proposals and evaluate potential contractors in accordance with FAR Part 36 and DIAR Subpart 1436.6.

(d) This paragraph applies to solicitations that are not restricted to participation of IEEs.

(1) If an interested IEE is identified after a market survey has been performed and a solicitation has been issued, but before the date established for receipt of offers, the contracting office must provide a copy of the solicitation to this enterprise. In this case, the CO:

(i) Will not give preference under the Buy Indian Act to the IEE, and

(ii) May extend the date for receipt of offers when practical.

(2) If more than one IEE comes forward subsequent to the solicitation, but prior to the date established for receipt of offers, the CO may cancel the solicitation and re-compete it as an IEE set-aside.

(e) When only one offer is received from a responsible IEE in response to an acquisition set-aside under paragraph (a) of this section:

(1) If the offer is not at a reasonable and fair market price, then the CO may negotiate with that enterprise for a reasonable and fair market price.

(2) If the offer is at a reasonable and fair market price, the CO must:

(i) Make an award to that enterprise;

(ii) Document the reason only one offer was considered; and

(iii) Initiate action to increase competition in future solicitations.

(f) Provisions and Clauses.

(1) Insert the clause at DIAR 1452.226-70, Indian Preference, in accordance with DIAR 1426.7003(a).

(2) Insert the clause at DIAR 1452.226-71, Indian Preference Program, in accordance with DIAR 1426.7003(b).

(3) Insert the clause at 1452.280-2, NOTICE OF INDIAN ECONOMIC ENTERPRISE SET-ASIDE, in accordance with 1480.504-1(a).

(4) Insert the clause at 1452.280-3, SUBCONTRACTING LIMITATIONS, in accordance with 1480.601(b).

(5) Insert the clause at 1452.280-4, INDIAN ECONOMIC ENTERPRISE REPRESENTATION, in accordance with 1480.801(a).

(6) When applicable, Tribal employment preference requirements may be added to the requirements of the clause in accordance with DIAR 1426.7005.

### **1480.504-2 Other circumstances for use of other than full and open competition.**

(a) Other circumstances may exist where the use of an IEE set-aside in accordance with 1480.401(a) and FAR 6.302-5 is not feasible. In such situations, the requirements of FAR Subparts 6.3 and DIAR Subparts 1406.3 apply in justifying the use of the appropriate authority for other than full and open competition.

(b) Except as provided in FAR 5.202, all proposed acquisition actions must first be publicized in accordance with the requirements of FAR 5.2 and DIAR 1405.2.

(c) Justifications for use of other than full and open competition in accordance with this section must be approved in accordance with DIAR 1406. These approvals are required for a proposed contract, or for an out of scope modification to an existing contract.

### **1480.505 Debarment and suspension.**

Violation of the regulations in this part by an offeror or an awardee may be cause for debarment or suspension in accordance with FAR 9.406 and 9.407. IA must refer recommendations for debarment or suspension to the Director, Office of Acquisition and Property Management, Department of the Interior, in accordance with DIAR 1409.406 and 1409.407 through the IA Division of Acquisitions with the concurrence of the head of the contracting activity.

## **Subpart 1480.6—Contract Requirements**

### **1480.601 Subcontracting limitations.**

(a) In contracts awarded under the Buy Indian Act and this part, the contractor must agree to perform the contract in accordance with FAR 52.219-14, Limitations on Subcontracting.

(b) The CO must also insert the clause at 1452.280-3, SUBCONTRACTING LIMITATIONS, in all purchase orders and contracts for services, supplies, or covered construction and awarded to IEEs pursuant this part.